

Weekend Reading: District Court of Nevada Grants Stay of TCPA Action Pending FCC Ruling or Until Ninth Circuit Issues its Decision in *Marks v. Crunch*

Article By:

Womble Bond Dickinson (US), LLP

Happy Friday folks.

District Court Judge, Judge C.W. Hoffman, for the United States District Court for the District of Nevada granted a motion to stay a TCPA suit, pending a ruling by the FCC or until the Ninth Circuit issues a decision in *Marks v. Crunch* Case No. 14-56834 (9th Cir. December 14, 2016). Recall, *Marks* is an appeal of a district court decision granting summary judgment for defendant on basis that platform used to send text messages was not an ATDS under the TCPA – that we have been keeping [an eye out on here](#) at TCPALand.

Judge C.W. Hoffman additionally denied Plaintiff's motion to amend without prejudice based on its staying the litigation in yesterday's decision, *Thomas v. Smith-Palluck Assocs. Corp*, Case No. 2:17-cv-02001-MMD-CWH, 2918 U.S. Dist. LEXIS 152211 (D. Nev. September 6, 2018).

The original lawsuit alleges that Defendant LVAC, violated the TCPA by using an automatic telephone dialing system to place calls to Plaintiff. Plaintiff moved to amend her complaint to: "(1) allege additional facts about LVAC's automatic telephone dialing equipment (2) asset claims for a putative class, and (3) drop her deceptive trade practices claim."

Additionally, Defendant moved to stay the litigation arguing that the law regarding what constitutes an ATDS is "in flux" and directs the Court to the pending FCC rulings and the *Marks v. Crunch* case.

The Defendant further argues that the Court is authorized to stay the case based on the primary jurisdiction doctrine which allows administrative agencies "with subject matter expertise, such as the FCC's expertise on the TCPA to rule on an issue within its purview." In further support of its motion to stay, the Defendant argues that the court has inherent authority to stay the case for efficiency reasons – that the "the court should not expend resources on discovery, motion practice, and trial, only to have to 'redo' the work when the FCC and Ninth Circuit render decisions on whether equipment used in this case qualifies as an automatic telephone dialing system under the TCPA."

The Plaintiff here did not oppose Defendant's motion and the Court seemed to be encouraged by Defendant's arguments.

In the Order granting the stay, the Court noted it was persuaded to grant a stay because it “appears the FCC is poised to determine whether dialing equipment similar to the equipment at issue in this case” and the deadline to file public comments with FCC has expired. Additionally, the court acknowledged that the oral arguments in *Marks v. Crunch* were completed on May 11, 2018.

As such, the Court granted Defendant’s unopposed motion to stay while denying Plaintiff’s motion to amend without prejudice – allowing Plaintiff to renew the motion after the stay is lifted.

This is another positive development within the Ninth Circuit where the Court correctly seems to respect the primary jurisdiction doctrine. We will continue to keep an eye out on these stay orders that [Eric predicted](#) would be coming in over the next few months.

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